UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

CONSERVATION LAW FOUNDATION, INC. Plaintiff, v. NYLON CORPORATION OF AMERICA, INC; and WEMBLY ENTERPRISES, LLC, Defendants.	)	Case No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES**

INTRODUCTION

1. This action is a citizen suit brought under Section 505 of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA,"), 33 U.S.C. § 1365(a), to address Clean Water Act violations by Nylon Corporation of America, Inc. ("NYCOA"), and Wembly Enterprises, LLC ("Wembly Enterprises") (collectively, "Nylon," or "Defendants").

2. Nylon is discharging pollutants into the Merrimack River in violation of its National Pollutant Discharge Elimination System ("NPDES") wastewater and stormwater permits. Nylon's discharge of pollutants into the Merrimack River degrades the river's health and diminishes the use and enjoyment of the river by CLF members.

3. Nylon's wastewater discharges have been subject to the 2008 and 2019 NPDES individual wastewater permit No. NH0000116 (the "2008 Wastewater Permit" and the "2019 Wastewater Permit," collectively, the "Wastewater Permits"). Nylon has discharged, and continues to discharge, wastewater into waters of the United States in violation of the Wastewater Permits by: (1) violating the Wastewater Permits' effluent limitation and the State's

Certification requirement for pH; (2) violating the Wastewater Permits' effluent limitation for temperature; (3) contributing to the receiving waters' failure to meet water quality standards, and interfering with its assigned use; (4) violating the Wastewater Permits' narrative effluent limitations; and (5) failing to comply with monitoring and reporting requirements.

4. Nylon's stormwater discharges have been subject to the 2015 and 2021 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2015 Stormwater Permit" and the "2021 Stormwater Permit," collectively, the "Stormwater Permits"). Nylon has discharged, and continues to discharge, stormwater associated with its industrial activities into waters of the United States in violation of the Stormwater Permits by: (1) failing to take required corrective actions; (2) failing to follow required procedures for minimizing pollutant discharges; (3) contributing to the receiving waters' failure to meet water quality standards and their impairments; and (4) failing to comply with monitoring and reporting requirements.

5. Conservation Law Foundation ("CLF") seeks declaratory judgment, injunctive relief, and other relief with respect to the Facility's violations of the Wastewater Permits, Stormwater Permits, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and applicable regulations, as well as the State's Certification requirement pertaining to pH discharges.

JURISDICTION AND VENUE

6. Plaintiff brings this civil suit under the citizen suit provision of Section 505 of the Clean Water Act, 33 U.S.C. § 1365.

7. This Court has subject matter jurisdiction over the parties and this action pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1); 28 U.S.C. § 1331 (an action arising under the Constitution and laws of the United States); and 28 U.S.C. §§ 2201 and 2202

(declaratory judgment).

8. On February 1, 2022, Plaintiff notified Nylon and its agents of its intention to file suit for violations of the Clean Water Act, in compliance with the statutory notice requirements of Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), and the corresponding regulations located at 40 C.F.R. § 135.2. A true and accurate copy of Plaintiff's Notice Letter ("Notice Letter") is attached as Exhibit 1. The Notice Letter is incorporated by reference herein.

9. Each Defendant received the Notice Letter. A copy of a return receipt is attached as Exhibit 2.

10. Plaintiff also sent copies of the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"), the Acting Regional Administrator of EPA Region 1, the Citizen Suit Coordinator, and the New Hampshire Department of Environmental Services ("NH DES").

11. Each of the addressees identified in the preceding paragraph received the Notice Letter. A copy of a return receipt is attached as Exhibit 3.

12. More than sixty days have elapsed since Plaintiff mailed its Notice Letter, during which time neither EPA nor the State of New Hampshire has commenced an action to redress the violations alleged in this Complaint. 33 U.S.C. § 1365(b)(1)(B).

13. The Clean Water Act violations alleged in the Notice Letter are of a continuing nature, ongoing, or reasonably likely to re-occur. The Defendants remain in violation of the Clean Water Act.

14. Venue is proper in the United States District Court for the District of New Hampshire pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial district.

PARTIES

Plaintiff

15. Plaintiff, Conservation Law Foundation ("CLF"), is a nonprofit, member-supported, regional environmental advocacy organization dedicated to protecting New England's environment.

16. CLF has a long history of working to protect the health of New England's water resources, including addressing sources of wastewater and industrial stormwater pollution.

17. CLF has over 6,300 members in New England. Members of CLF use and enjoy the waters of New Hampshire, including the Merrimack River, for drinking water and for recreational and aesthetic purposes, including but not limited to boating, swimming, fishing, and observing wildlife.

18. CLF members live and spend time near the Merrimack River. CLF members use and enjoy the Merrimack River downstream from Defendants' facility for recreational purposes, including swimming, rowing, kayaking, birdwatching, and observing wildlife; as well as aesthetic purposes.

19. CLF members live in the Merrimack River Watershed and currently source their drinking water from the Merrimack River.

20. CLF members have been, and continue to be, directly and adversely affected by discharges from Defendants' Facility degrading water quality in the Merrimack River, in violation of the Clean Water Act.

21. CLF members are harmed by low-pH and high temperature wastewater discharge to the Merrimack River from Defendants' Facility, in violation of the Clean Water Act.

22. CLF members are harmed by stormwater discharge of zinc and other pollutants to the Merrimack River from Defendants' Facility, in violation of the Clean Water Act.

23. Nylon's wastewater and stormwater discharges impair the recreational and aesthetic uses of the Merrimack River by harming fish, birds, and other wildlife, contributing to unpleasant scum, foam, and/or odor, increasing toxic pollution, and reducing the use and enjoyment of the river by CLF members.

Defendants

24. Defendant Nylon Corporation of America ("NYCOA") is a corporation incorporated under the laws of Delaware.

25. Defendant Wembly Enterprises, LLC ("Wembly Enterprises") is a corporation incorporated under the laws of New Jersey.

26. Defendant Wembly Enterprises is the parent company of NYCOA.

27. Defendant Wembly Enterprises has control over its subsidiary NYCOA.

28. Defendant Wembly Enterprises is liable for the Clean Water Act violations of NYCOA.

29. Defendant Wembly Enterprises and its subsidiary NYCOA own and/or operate a nylon production facility located at 333 Sundial Avenue in Manchester, New Hampshire, 03103 (the "Facility").

30. Defendant NYCOA has owned and/or operated the Facility since at least 1994.

31. Defendant Wembly Enterprises has owned and/or operated the Facility since at least 2013.

32. Defendants Wembly Enterprises and NYCOA are responsible for ensuring that the Facility operates in compliance with the Clean Water Act.

33. Defendants Wembly Enterprises and NYCOA are both persons as defined by Section 502(5) of the Clean Water Act, 33 U.S.C. 1362(5).

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

34. The objective of the Clean Water Act is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a) (1972).

35. The Clean Water Act prohibits the addition of any pollutant to navigable waters from any point source except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit applicable to that point source. 33 U.S.C. §§ 1311(a) and 1342.

36. Under the Clean Water Act's implementing regulations, the "discharge of a pollutant" is defined as "[a]ny addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source.'" 40 C.F.R. § 122.2. *See also* 33 U.S.C. § 1362(12).

37. A "pollutant" is any "solid waste," "chemical wastes, biological materials," "wrecked or discarded equipment, rock, sand," and "industrial . . . waste" discharged into water. 33 U.S.C. § 1362(6).

38. The Clean Water Act defines navigable waters as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). "Waters of the United States" are defined by EPA regulations to include, *inter alia*, all tributaries to interstate waters. *See* 40 C.F.R. § 122.2.

39. "Point source" is defined broadly to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

40. Section 402 of the CWA requires that NPDES permits be issued for wastewater discharges. 33 U.S.C. § 1342.

41. Wastewater permits establish effluent and narrative limitations to control discharges of pollutants to receiving waters.

42. In order to discharge wastewater lawfully, dischargers must obtain coverage under a wastewater permit and comply with its terms.

43. Section 402 of the CWA requires that NPDES permits be issued for stormwater discharges associated with industrial activities. 33 U.S.C. §§ 1342(a)(1), 1342(p)(2), 1342(p)(3)(A), 1342(p)(4), 1342(p)(6).

44. In establishing the regulations at 40 C.F.R. § 122.26, EPA cited data showing the harmful effects of stormwater runoff on rivers, streams, and coastal areas across the nation. Runoff from industrial facilities contain elevated pollution levels. 55 Fed. Reg. 47990, 47991 (Nov. 16, 1990).

45. In September 1995, EPA issued a NPDES Storm Water Multi-Sector General Permit for Industrial Activities. EPA re-issued the Stormwater Permit on October 30, 2000, 65 Fed. Reg. 64746; on September 29, 2008, 73 Fed. Reg. 56572; on June 4, 2015 (the "2015 Stormwater Permit"), 80 Fed. Reg. 34403; and on September 29, 2021 (the "2021 Stormwater Permit"), 86 Fed. Reg. 10269.

46. Defendants' Stormwater Permits were issued by EPA pursuant to Sections 402(a) and 402(p) of the CWA and regulates stormwater discharges from industrial facilities. 33 U.S.C. §§ 1342(a), 1342(p).

47. In order to discharge stormwater lawfully, Defendants were required to obtain coverage under the Stormwater Permits and comply with their terms.

48. Defendants were required to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") that identifies sources of pollutants associated with industrial discharges from the Facility and that identifies effective Best Management Practices to control pollutants in stormwater discharges in a manner that achieves the substantive requirements of the permit. 2015 Stormwater Permit § 2.1 at 14; 2021 Stormwater Permit § 2.1 at 18.

49. The Stormwater Permits incorporate state water quality standards for all affected states. 2015 Stormwater Permit § 2.2.1 at 20; 2021 Stormwater Permit § 2.2.1 at 25.

50. The Stormwater Permits require permittees to control stormwater discharges and to modify their control measures "as necessary to meet applicable water quality standards of all affected states." 2015 Stormwater Permit § 2.1 at 14, § 2.2.1 at 20; 2021 Stormwater Permit § 2.2.1 at 25.

New Hampshire's Surface Water Quality Regulations

51. New Hampshire's state surface water quality standards address the chemical, physical, and biological integrity of surface waters; the protection and propagation of fish, shellfish, and wildlife; and recreation. N.H. Code Admin. R. Env-Wq §§ 1703.01(b), (c); 1703.19 (2022).

52. New Hampshire's state surface water quality standards require that the pH of Class B waters be between 6.5 and 8.0 standard units ("S.U."), unless naturally occurring. *Id.* § 1703.18.

53. New Hampshire's state surface water quality standards address substances that settle as harmful deposits; float as foam, debris, or scum; produce unnatural and unsuitable odor, color, taste, or turbidity; or interfere with recreation. *Id.* § 1703.03(c)(1).

54. New Hampshire state surface water quality standards require that Class B waters "shall contain no oil or grease in such concentrations that would impair any existing or designated uses." *Id.* § 1703.09(b).

55. New Hampshire state surface water quality standards do not allow Class B waters to contain color in such concentrations that would impair any existing or designated uses, unless naturally occurring. *Id.* § 1703.10(b).

56. New Hampshire state surface water quality standards require that Class B waters "shall contain no slicks, odors, or surface floating solids that would impair any existing or designated

use, unless naturally occurring." *Id.* § 1703.12(b).

57. New Hampshire state surface water quality standards require that "all surface waters shall be free from toxic substances or chemical constituents in concentrations or combinations that:

(1) Injure or are inimical to plants, animals, humans or aquatic life; or

(2) Persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in:

a. Edible portions of fish, shellfish, other aquatic life, or

b. Wildlife that might consume aquatic life.

Id. § 1703.21(a).

Citizen Enforcement Suits Under the Clean Water Act

58. The Clean Water Act authorizes citizen enforcement actions against any "person" who is alleged to be in violation of an "effluent standard or limitation . . . or an order issued by the Administrator or a State with respect to such a standard or limitation." 33 U.S.C. § 1365(a)(1).

59. An "effluent limitation" is "any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." *Id.* § 1362(11).

60. Such enforcement action under Section 505(a)(1) of the Clean Water Act includes an action seeking remedies for unauthorized discharges under Section 301 of the Clean Water Act, 33 U.S.C § 1311, as well as for violations of a permit condition under Section 505(f), 33 U.S.C. § 1365(f).

61. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to the maximum amount allowed pursuant to Sections 309(d) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(d), 1365(a). *See also* 40 C.F.R. §§ 19.1-19.4.

FACTUAL BACKGROUND

The Facility's Wastewater Permits

62. The Facility discharges cooling wastewater from heat exchangers and vacuum pumps through Outfall Serial Number 004 to the Merrimack River.

63. The Facility discharges backwash wastewater from the Facility's intake water strainer through Outfall Serial Number 007 to the Merrimack River.

64. On September 23, 2008, EPA issued Nylon NPDES permit No. NH0000116 for its cooling and backwash wastewater discharges. Nylon was required to comply with the requirements of the 2008 Wastewater Permit from at least October 1, 2008 until August 1, 2019.

65. On May 21, 2013, Nylon filed an application for permit reissuance with EPA. On August 1, 2019, EPA renewed Nylon's Wastewater Permit. Nylon has been required to comply with the requirements of the 2019 Wastewater Permit since August 1, 2019.

Nylon's Numeric Effluent Limitations Under the Wastewater Permits

66. The Wastewater Permits place limits on the quantity and concentration of pollutants that Nylon is legally permitted to discharge into the Merrimack River through Outfalls 004 and 007 by setting effluent limitations for pH and temperature.

67. The 2008 Wastewater Permit requires that the pH level of the Facility's effluent be between 6.5 to 8.0 standard units, unless the upstream ambient pH in the receiving water is outside of this range and it is not altered by the Facility's discharge or activities. If the Facility's discharge pH is lower than 6.5 standard units, the Facility may demonstrate compliance by showing that the discharge pH is either higher than, or no more than 0.5 standard units lower than, the ambient upstream receiving water pH. 2008 Wastewater Permit at 2, 3, 4, 7.

68. The 2019 Wastewater Permit requires that effluent discharged from the Facility have a pH level within a specified range of 6.5 to 8.0 standard units, unless the range should be widened

due to naturally occurring conditions in the receiving water; or the naturally occurring receiving water pH is not significantly altered by the Facility's discharge. In no case shall the pH limits be outside the range of 6.0 to 9.0 standard units. 2019 Wastewater Permit at 2, 5, 13.

69. The effluent limitations for pH are also a State Certification requirement pursuant to Section 401 of the CWA. 2008 Wastewater Permit at 4.

70. The Wastewater Permits require that effluent discharged from the Facility not exceed a maximum daily temperature of 83 degrees Fahrenheit. 2008 Wastewater Permit at 2-3; 2019 Wastewater Permit at 2, 5.

Nylon's Narrative Effluent Limitations Under the Wastewater Permits

71. The Wastewater Permits require that Nylon's discharges "not cause a violation of the water quality standards of the receiving water." 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

72. The 2019 Wastewater Permit prohibits Nylon from discharging waste "unless it has been treated in such manner as will not lower the legislated water quality classification or interfere with the uses assigned to said water by the New Hampshire Legislature (RSA 485-A:12)." 2019 Wastewater Permit at 13.

73. The 2008 Wastewater Permit requires that Nylon's wastewater discharges "remain free from pollutants which produce odor, color, taste or turbidity in the receiving waters which is not naturally occurring and would render it unsuitable for its designated uses." 2008 Wastewater Permit at 4.

74. The 2019 Wastewater Permit requires that Nylon's wastewater discharge "remain free from substances in kind or quality that produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses; result in the

dominance of nuisance species; or interfere with recreational activities." 2019 Wastewater Permit at 8.

75. The 2019 Wastewater Permit requires that Nylon's wastewater discharge "not result in oil and grease, color, slicks, odors, or surface floating solids that would impair any existing or designated receiving water uses." 2019 Wastewater Permit at 8.

76. The 2008 Wastewater Permit prohibits the "discharge into receiving waters of any pollutant or combination of pollutants in toxic amounts." 2008 Wastewater Permit at 4.

77. The 2019 Wastewater Permit prohibits discharges that "result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans, or aquatic life." 2019 Wastewater Permit at 8.

78. The 2019 Wastewater Permit prohibits discharges that "persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life." 2019 Wastewater Permit at 8.

Nylon's Monitoring and Reporting Requirements Under the Wastewater Permits

79. The 2019 Wastewater Permit requires Nylon to monitor the maximum daily residual chlorine from Outfall 004 once per week with a grab sample and report the results to EPA quarterly. 2019 Wastewater Permit at 2, 5.

80. The 2019 Wastewater Permit requires Nylon to report any noncompliance which may endanger health or the environment verbally within 24 hours from the time it becomes aware of the circumstances. 2019 Wastewater Permit at 9-10.

81. The 2019 Wastewater Permit requires Nylon to submit a written report to EPA detailing any noncompliance which may endanger health or the environment within 5 days. 2019

Wastewater Permit at 9-10.

82. Nylon is required to submit discharge monitoring reports to EPA by the 15th day of each month using EPA's electronic NetDMR tool. 2008 Wastewater Permit at 6; 2019 Wastewater Permit Fact Sheet at 10.

The Facility's Stormwater Permits

83. The Facility discharges stormwater associated with industrial activity.

84. Nylon's activities include those which are classified by the Stormwater Permits as subsector C4: Plastics, Synthetics, and Resins. 2015 Stormwater Permit § 8.C.3 at 58-60; 2021 Stormwater Permit § 8.C.4 at 78-79.

85. Nylon's activities include the manufacturing of polyamide-type synthetic resin (Nylon 6, 6-6, and copolymers), produced in a pelletized form for use in transportation, packaging, electrical, and aerospace applications per § 8.C.3 of the 2015 Stormwater Permit and § 8.C.4 of the 2021 Stormwater Permit. 2015 Stormwater Permit at 59; 2021 Stormwater Permit at 79.

86. Nylon was required to comply with the requirements of the 2015 Stormwater Permit from at least October 2015 until around July 1, 2021.

87. Nylon submitted its Notices of Intent for Stormwater Discharges Associated with Industrial Activity Under the [2021] NPDES Multi-Sector General Permit for the Facility on May 27, 2021.

88. Nylon is required to comply with the requirements of the 2021 Stormwater Permit and has been required to comply with the requirements of the 2021 Stormwater Permit since around July 1, 2021.

Nylon's Pollutant Control Requirements Under the Stormwater Permits

89. The Stormwater Permits require Nylon to "select, design, install, and implement control

measures (including best management practices) to minimize pollutant discharges [and] that address the selection and design considerations in Part 2.1.1, meet the non-numeric effluent limits in Part 2.1.2, . . . and meet the water quality-based effluent limitations in Part 2.2." 2015 Stormwater Permit § 2.1 at 14; 2021 Stormwater Permit § 2.1 at 18.

90. The Stormwater Permits require Nylon to "minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings." 2015 Stormwater Permit § 2.1.2.1 at 15; 2021 Stormwater Permit § 2.1.2.1 at 20.

91. The Stormwater Permits require Nylon to "keep clean all exposed areas that are potential sources of pollutants" and "perform good housekeeping measures in order to minimize pollutant discharges." 2015 Stormwater Permit § 2.1.2.2 at 15-16; 2021 Stormwater Permit § 2.1.2.2 at 20-21.

92. The Stormwater Permits require Nylon to "[s]weep or vacuum at regular intervals or, alternatively, wash down the area and collect and/or treat, and properly dispose of the washdown water." *Id.*

93. The Stormwater Permits require Nylon to "[m]inimize the potential for waste, garbage and floatable debris to be discharged by keeping exposed areas free of such materials, or by intercepting them before they are discharged." 2015 Stormwater Permit § 2.1.2.2 at 16; 2021 Stormwater Permit § 2.1.2.2 at 21.

94. The Stormwater Permits require Nylon to "maintain all control measures that are used to achieve the effluent limits in this permit in effective operating condition, as well as all industrial equipment and systems, in order to minimize pollutant discharges." 2015 Stormwater Permit §

2.1.2.3 at 16-17; 2021 Stormwater Permit § 2.1.2.3 at 21-22.

95. The Stormwater Permits require Nylon to "perform[] inspections and preventative maintenance of stormwater drainage, source controls, treatment systems, and plant equipment and systems that could fail and result in discharges of pollutants via stormwater." *Id.*

96. The Stormwater Permits require Nylon to "clean[] catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth . . . and keep[] the debris surface at least six inches below the lowest outlet pipe." *Id.*

97. The Stormwater Permits require that if Nylon "find[s] that [its] control measures need routine maintenance, [it] must conduct the necessary maintenance immediately in order to minimize pollutant discharges." *Id.* If Nylon "find[s] that [its] control measures need to be repaired or replaced, [it] must immediately take all reasonable steps to prevent or minimize the discharge of pollutants until the final repair or replacement is implemented." *Id.*

98. The Stormwater Permits require Nylon to "minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur in order to minimize pollutant discharges. [It] must conduct spill prevention and response measures," including measures listed in § 2.1.2.4 of the Stormwater Permits. 2015 Stormwater Permit § 2.1.2.4 at 17; 2021 Stormwater Permit § 2.1.2.4 at 22-23.

99. The Stormwater Permits require Nylon to minimize erosion and discharge of sediment. 2015 Stormwater Permit § 2.1.2.5 at 17-18; 2021 Stormwater Permit § 2.1.2.5 at 23.

100. The Stormwater Permits require Nylon to "divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff to minimize pollutants in [its] discharges." 2015 Stormwater Permit § 2.1.2.6 at 18; 2021 Stormwater Permit § 2.1.2.6 at 23.

101. The Stormwater Permits require Nylon to "evaluate for the presence of non-stormwater discharges. . . If not covered under a separate NPDES permit, wastewater, wash water and any other unauthorized non-stormwater must be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or otherwise disposed of appropriately." 2015 Stormwater Permit § 2.1.2.9 at 19; 2021 Stormwater Permit § 2.1.2.9 at 24.

102. The Stormwater Permits require Nylon to "minimize generation of dust and off-site tracking of raw, final, or waste materials in order to minimize pollutants discharged via stormwater." 2015 Stormwater Permit § 2.1.2.10 at 19; 2021 Stormwater Permit § 2.1.2.10 at 24.

103. The Stormwater Permits require Nylon to conduct routine facility inspections "of areas of the facility covered by the requirements in the [Stormwater Permits]" at least quarterly. 2015 Stormwater Permit § 3.1 at 22-24; 2021 Stormwater Permit § 3.1 at 27-29.

104. The Stormwater Permits require that "[d]uring an inspection occurring during a stormwater event or discharge, control measures implemented to comply with effluent limits must be observed to ensure they are functioning correctly." *Id.*

Nylon's Monitoring and Reporting Requirements Under the Stormwater Permits

105. The Stormwater Permits require Nylon "to collect and analyze stormwater samples" during "a storm event that results in an actual discharge from [the] site . . . . at least once in each of the following 3-month intervals: January 1 – March 31; April 1– June 30; July 1– September 30; October 1– December 31." 2015 Stormwater Permit § 6, § 6.1.3, § 6.1.7 at 39-40; 2021 Stormwater Permit § 4, § 4.1.3, § 4.1.7 at 31-33.

106. The Stormwater Permits require Nylon to conduct quarterly benchmark monitoring for zinc. 2015 Stormwater Permit § 6.2 at 40-41, § 8.C.3 at 58-59; 2021 Stormwater Permit § 4.2 at 33-35, § 8.C.4 at 78-79.

107. "When adverse weather conditions [such as flooding, high winds, electrical storms, or extended frozen conditions] prevent the collection of stormwater discharge samples according to the relevant [benchmark or impaired waters] monitoring schedule, [Nylon] must take a substitute sample during the next qualifying storm event." 2015 Stormwater Permit § 6.1.5 at 39-40; 2021 Stormwater Permit § 4.1.5 at 33.

108. Once each quarter for the entire Stormwater Permit term, Nylon must collect a stormwater sample from each outfall and conduct a visual assessment of each of these samples. 2015 Stormwater Permit § 3.2.1 at 24; 2021 Stormwater Permit § 3.2.1 at 29. Nylon "must visually inspect or observe the sample for the following water quality characteristics: color; odor; clarity (diminished); floating solids; settled solids; suspended solids; foam; oil sheen; and other obvious indicators of stormwater pollution." *Id.*; 2021 Stormwater Permit § 3.2.2.4 at 29-30.

109. "When adverse weather conditions prevent the collection of stormwater discharge sample(s) during the quarter [for visual assessment], [Nylon] must take a substitute sample during the next qualifying storm event. Documentation of the rationale for no visual assessment for the quarter must be included with [Nylon's] SWPPP records." 2015 Stormwater Permit § 3.2.3 at 25; 2021 Stormwater Permit § 3.2.4.1 at 30.

110. The Facility is "considered to discharge to an impaired water if the first water of the U.S. to which [it] discharges is identified by a state, tribe, or EPA pursuant to section 303(d) of the CWA as not meeting an applicable water quality standard . . ." 2015 Stormwater Permit § 6.2.4 at 45; 2021 Stormwater Permit § 4.2.5 at 42.

111. The 2015 Stormwater Permit requires Nylon to "monitor all pollutants for which the waterbody is impaired and for which a standard analytical method exists . . . once per year at each outfall (except substantially identical outfalls) discharging stormwater to impaired waters

without an EPA-approved or established TMDL [Total Maximum Daily Load].” The Stormwater Permits identify such monitoring as “impaired waters monitoring.” 2015 Stormwater Permit § 6.2.4.1 at 45; 2021 Stormwater Permit § 4.2.5 at 42.

112. The 2021 Stormwater Permit requires Nylon to conduct impaired waters monitoring “annually in the first year of permit coverages and again in the fourth year of permit coverage. . . unless [it] detect[s] a pollutant causing an impairment, in which case annual monitoring must continue.” 2021 Stormwater Permit § 4.2.5.1 at 42.

113. Upon information and belief, Nylon was and/or is required to conduct impaired waters monitoring for pH, aluminum, dissolved oxygen, E. Coli, and/or mercury. U.S. EPA, *How’s My Waterway*, 2014 Waterbody Report for Merrimack River (NHRIV700060803-14-02).

114. Nylon is required to report its monitoring data to EPA using EPA’s electronic NetDMR tool. 2015 Stormwater Permit § 6.1.9 at 40; 2021 Stormwater Permit § 4.1.9 at 33.

Nylon’s Required Corrective Action and Additional-Implementation-Measures Under the Stormwater Permits

115. The Stormwater Permits include sector-specific benchmarks for Sector C4 facilities like Nylon. 2015 Stormwater Permit § 8.C at 58-60; 2021 Stormwater Permit § 8.C at 77-80.

116. The Stormwater Permits require Nylon to take corrective action or Additional Implementation Measures (“AIMs”) when the following triggering events occur: 1) “the average of four quarterly sampling results exceeds an applicable benchmark” or, if less than four benchmark samples have been taken, “an exceedance of the four quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than four times the benchmark level),” 2015 Stormwater Permit at 27; 2021 Stormwater Permit at 39; 2) Nylon’s control measures are not stringent enough for the discharge and/or the receiving water of the United States to meet applicable water quality standards or the non-numeric effluent limits in the

Stormwater Permits, 2015 Stormwater Permit at 27; 2021 Stormwater Permit at 45; 3) a visual assessment shows evidence of stormwater pollution (e.g., color, odor, floating solids, settled solids, suspended solids, foam), *id.*; or 4) a required control measure was never installed, was installed incorrectly, or not in accordance with the Stormwater Permits, or is not being properly operated or maintained. *Id*.

117. Following a triggering event, Nylon is required to: 1) review and revise its SWPPP so that the Stormwater Permits' effluent limits are met and pollutant discharges are minimized; 2) immediately take all reasonable steps necessary to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational; and 3) if necessary, "complete the corrective actions. . . before the next storm event if possible, and within 14 calendar days from the time of discovery of the corrective action condition." 2015 Stormwater Permit § 4.1 at 27, § 4.3.1 at 28, § 4.3.2 at 28; 2021 Stormwater Permit § 5.1.1 at 45, § 5.1.3.1 at 46, § 5.1.3.2 at 46.

Nylon's Narrative Effluent Limitations Under the Stormwater Permits

118. Under the Stormwater Permits, Nylon is required to control its stormwater discharges "as necessary to meet applicable water quality standards of all affected states." 2015 Stormwater Permit § 2.2.1 at 20; 2021 Stormwater Permit § 2.2.1 at 25.

119. The 2015 Stormwater Permit requires that Nylon's discharge not cause or contribute to an exceedance of applicable water quality standards in any affected state. 2015 Stormwater Permit § 2.2.1 at 20.

120. The Stormwater Permits require that if at any time Nylon becomes aware that its discharge does not meet applicable water quality standards or its stormwater discharge will not be controlled as necessary such that the receiving water of the United States will not meet an

applicable water quality standard, Nylon must take corrective action(s) and document the corrective actions. 2015 Stormwater Permit § 2.2.1 at 20; 2021 Stormwater Permit § 2.2.1 at 25.

121. If Nylon finds that its control measures are not achieving their intended effect of minimizing pollutant discharges to meet applicable water standards or any of the other non-numeric effluent limits in the Stormwater Permits, Nylon must modify these control measures per the corrective action requirements. 2015 Stormwater Permit § 2.1 at 14; 2021 Stormwater Permit § 2.1 at 18.

The Facility's Operations and Discharges

122. Defendants NYCOA and Wembly Enterprises have operated and continue to operate a nylon production facility at 333 Sundial Avenue in Manchester, New Hampshire ("Nylon" or "the Facility").

123. The Facility manufactures polyamide-type synthetic resin (nylon 6, 6-6, and copolymers) in pelletized form.

Wastewater Discharges

124. To reduce or control the temperature of various stages of the nylon manufacturing process, the Facility uses cooling water withdrawn from a pair of cooling water intake structures that are located near the bottom of the Merrimack River.

125. The cooling water is associated with the operation of several heat exchangers and a vacuum pump and is discharged to the Merrimack River via Outfall 004.

126. Nylon also operates a backwash system that removes deposits from a filter located on the discharge side of the cooling pumps; this backwash is discharged to the Merrimack River via Outfall 007.

Stormwater Discharges

127. Nylon's Stormwater Pollution Prevention Plan ("SWPPP") identifies the following

potential stormwater pollution sources at the Facility: No. 2 fuel oil AST and unloading area, second floor lubrication station, extrusion department oil and wetting agent storage area, warehouse receiving docks, R-2 hydraulic drive unit, hydraulic elevator reservoir, electrical transformers, solid waste compactor, caprolactam storage and unloading area, hexamethylenediamine (HMD) storage and unloading area, process water AST outdoor storage (Capro Recovery), portable steel process vessel cleaning tank, effluent monitoring station, pallet storage, dowtherm overflow/eclipse (2) vaporizer system, dowtherm vapor overflow collection, heat transfer fluid hold tank/vent line, bath process dryers, acetone waste accumulation area, safety kleen degreaser, sulfuric acid waste accumulation area, air emissions- dust collector, air emissions- extractor vents in packaging area, air emissions- dryer holding tank vents, sloped and unpaved areas subject to erosion, fire hydrant flushing/authorized non-stormwater discharge, irrigation system flushing/authorized non-stormwater discharge, hazardous waste storage area, rupture disk vent under the fire escape, dowtherm collection 55 gallon drum inside the zimmer wing, and tanker truck used for cleanouts.

128. Nylon's SWPPP identifies the following potential pollutants in their storm water runoff: oil (including no. 2 fuel oil, lubricating oils, hydraulic oil, and mineral oil), hydraulic fluid, grease, lubricants, wetting agents, flammable material, combustible material, corrosive material, miner oil dielectric fluid, BOD, TSS, waste liquid materials disposed of in roll off, caprolactam, HMD (high pH), diethylene glycol, triethylene glycol, dowtherm, heat transfer fluids, VOCs, capro dust, acetone, degreasing solvent, sulfuric acid, nylon pellets, nylon dust, hazardous waste.

129. Upon information and belief, the Facility's handling and/or storage of the pollutants listed in paragraph 128 have resulted in leaks and/or slicks at the Facility.

130. Upon information and belief, leaks and/or slicks of the pollutants listed in paragraph 128

have been exposed to precipitation and snowmelt.

131. Upon information and belief, the Facility stores raw materials, including polymers, stabilizers, resin, and colors, in aboveground storage tanks that are exposed to precipitation and snowmelt.

132. The Facility stores bulk fuel in aboveground storage tanks that are exposed to precipitation and snowmelt.

133. According to Nylon's annual reports, building structures, fencing, and other items at the Facility are exposed to precipitation and snowmelt.

134. Upon information and belief, the Facility has fuel oil unloading areas that are exposed to precipitation and snowmelt.

135. Upon information and belief, the Facility has chemical loading and unloading areas that are exposed to precipitation and snowmelt.

136. Upon information and belief, dust and sediments are generated from the loading and unloading of raw materials, including caprolactam, from railcars at the Facility.

137. Upon information and belief, as Nylon loads and unloads raw materials from railcars, dust and sediments are generated which directly enter catch basins, culverts, and/or drainage swales and are discharged from the Facility in stormwater.

138. Construction vehicles at the Facility generate dust and track oil, grease, sediments, and other pollutants on-site where precipitation and snowmelt washes these pollutants into catch basins, culverts, and/or drainage swales and directly into the Merrimack River.

139. Delivery vehicles entering and leaving the Facility track oil, grease, sediments, raw materials, and other pollutants on-site where precipitation and snowmelt washes these pollutants into catch basins, culverts, and/or drainage swales and directly into the Merrimack River.

140. Precipitation and snowmelt at the Facility becomes contaminated with dust and solids, fuel and oil, and organic contaminants including caprolactam and other raw materials, and other pollutants associated with the Facility's operations.

141. During every measurable precipitation event and every instance of snowmelt, water flows onto and over exposed materials and accumulated pollutants at the Facility, generating stormwater runoff.

142. EPA considers precipitation above 0.1 inches during a 24-hour period a measurable precipitation event. 40 C.F.R. § 122.26(c)(i)(E)(6).

143. Upon information and belief, a measurable precipitation event is sufficient to generate runoff from the Facility.

144. Nylon has discharged, and continues to discharge, stormwater associated with industrial activities from the Facility into waters of the United States through Outfalls 001, 002, 003, and 004.

145. Nylon's stormwater drainage system consists of catch basins, culverts, and drainage swales that discharge to surface waters.

146. Upon information and belief, stormwater runoff from the Facility is collected, channeled, and conveyed via site grading, curbing, berming, slopes, site infrastructure, the operation of gravity, and other conveyances into the stormwater drainage system which conveys the runoff into the Merrimack River.

147. Nylon has a SWPPP that was most recently updated in January 2022. Upon information and belief, Nylon's SWPPP has not been modified in response to conditions requiring SWPPP review and revision, per § 4.1 of the 2015 Stormwater Permit and § 5.1.1 of the 2021 Stormwater Permit, since at least January 2017.

148. Nylon's operations cause the discharge of zinc and other pollutants from Facility Outfalls 001, 002, 003, and 004 to the Merrimack River.

The Waterbody Affected by the Facility's Discharges

149. The Merrimack River is a Class B waterbody.

150. The Merrimack River is a navigable water within the meaning of the Clean Water Act.

151. The Merrimack River's designated uses include aquatic life, fish consumption, potential drinking water supply, and primary and secondary contact recreation.

152. The Merrimack River is a source of drinking water for around 600,000 residents of New Hampshire and Massachusetts.

153. The Merrimack River is a popular resource for residents and visitors who enjoy swimming, fishing, boating, kayaking, canoeing, hiking, observing wildlife, and a variety of other aesthetic, and primary and secondary contact recreation uses on and near the River.

154. The Facility discharges pollutants to the Merrimack River at waterbody segment NHRIV700060803-14-02. 2019 Wastewater Permit Fact Sheet at 1.

155. Waterbody segment NHRIV700060803-14-02 was listed as impaired on the 2016 and 2018 303(d) lists for aquatic life integrity from aluminum, phosphorus, and pH.

156. Waterbody segment NHRIV700060803-14-02 is impaired for fish consumption from mercury, and for primary contact recreation from E. coli.

157. In 2010, NH DES prepared a New Hampshire Statewide Total Maximum Daily Load ("TMDL") for Bacteria Impaired Waters addressing the E. coli impairments for waterbody segment NHRIV700060803-14-02.

158. In 2007, NH DES along with the Connecticut Department of Environmental Protection, the Maine Department of Environmental Protection, the Massachusetts Department of

Environmental Protection, the New York State Department of Environmental Conservation, the Rhode Island Department of Environmental Management, the Vermont Department of Environmental Conservation, and the New England Interstate Water Pollution Control Commission prepared a Northeast Regional Mercury Total Maximum Daily Load addressing regional mercury impairments, including in the lower Merrimack River in New Hampshire.

DEFENDANTS' VIOLATIONS OF THE CLEAN WATER ACT

Numeric Effluent Limitation Violations of the Wastewater Permits

Pollutant: pH

159. Fluctuating pH or sustained pH outside the optimal range of 6.5-8.0 standard units physiologically stresses many species and can result in decreased reproduction, decreased growth, disease or death, and, ultimately, reduced biological diversity of aquatic communities.

160. Small changes in pH can shift community composition in waterbodies because pH alters the chemical state of many pollutants, including aluminum and mercury.

161. Acidic conditions increase the solubility, transport, and bioavailability of these pollutants, thereby rendering them more toxic and increasing the exposure of aquatic plants and animals.

162. The Facility has discharged effluent in violation of the Wastewater Permits' minimum pH level requirement of 6.5 standard units at least 32 times between the first quarter of 2017 and the first quarter of 2022, as detailed in the table below.

Par. No.	Pollutant Criteria	Monitoring Period End Date	Outfall	Permit Limit	Measured Value
163.	pH	12/31/2018	004	6.5-8.0 S.U.	6.4 S.U.
164.	pH	4/30/2019	004	6.5-8.0 S.U.	6.3 S.U.
165.	pH	5/31/2019	004	6.5-8.0 S.U.	6.1 S.U.
166.	pH	10/31/2019	004	6.5-8.0 S.U.	6.3 S.U.
167.	pH	11/30/2019	004	6.5-8.0 S.U.	6.0 S.U.
168.	pH	12/31/2019	004	6.5-8.0 S.U.	5.8 S.U.
169.	pH	1/31/2020	004	6.5-8.0 S.U.	6.1 S.U.
170.	pH	2/29/2020	004	6.5-8.0 S.U.	6.0 S.U.

171.	pH	3/31/2020	004	6.5-8.0 S.U.	6.0 S.U.
172.	pH	3/31/2020	007	6.5-8.0 S.U.	6.2 S.U.
173.	pH	4/30/2020	004	6.5-8.0 S.U.	5.9 S.U.
174.	pH	5/31/2020	004	6.5-8.0 S.U.	6.0 S.U.
175.	pH	6/30/2020	007	6.5-8.0 S.U.	6.4 S.U.
176.	pH	10/31/2020	004	6.5-8.0 S.U.	6.2 S.U.
177.	pH	11/30/2020	004	6.5-8.0 S.U.	6.2 S.U.
178.	pH	12/31/2020	004	6.5-8.0 S.U.	5.8 S.U.
179.	pH	12/31/2020	007	6.5-8.0 S.U.	6.2 S.U.
180.	pH	1/31/2021	004	6.5-8.0 S.U.	5.8 S.U.
181.	pH	2/28/2021	004	6.5-8.0 S.U.	6.1 S.U.
182.	pH	3/31/2021	004	6.5-8.0 S.U.	6.0 S.U.
183.	pH	3/31/2021	007	6.5-8.0 S.U.	6.2 S.U.
184.	pH	4/30/2021	004	6.5-8.0 S.U.	5.9 S.U.
185.	pH	5/31/2021	004	6.5-8.0 S.U.	5.9 S.U.
186.	pH	6/30/2021	004	6.5-8.0 S.U.	6.1 S.U.
187.	pH	6/30/2021	007	6.5-8.0 S.U.	5.9 S.U.
188.	pH	9/30/2021	004	6.5-8.0 S.U.	6.3 S.U.
189.	pH	10/31/2021	004	6.5-8.0 S.U.	6.4 S.U.
190.	pH	11/30/2021	004	6.5-8.0 S.U.	6.2 S.U.
191.	pH	12/31/2021	004	6.5-8.0 S.U.	6.3 S.U.
192.	pH	12/31/2021	007	6.5-8.0 S.U.	5.6 S.U.
193.	pH	1/31/2022	004	6.5-8.0 S.U.	6.2 S.U.
194.	pH	2/28/2022	004	6.5-8.0 S.U.	6.4 S.U.

Pollutant: Temperature

195. Fish, insects, zooplankton, phytoplankton, and other aquatic species all have specific temperature ranges necessary for their survival.

196. As temperature increases above or decreases below a species' required range, individuals of the species die.

197. Increases in water temperatures can lead to an increase in pathogens, nutrients, algal blooms, rates of water evaporation, and invasive species.

198. The Facility has discharged effluent in violation of the Wastewater Permits' maximum daily temperature limitation of 83 degrees Fahrenheit at least 6 times between the first quarter of 2017 and the last quarter of 2021, as detailed in the table below.

Par. No.	Pollutant Criteria	Monitoring Period End Date	Outfall	Permit Limit	Measured Value
199.	Temperature	7/31/2018	004	83°F Maximum Daily	86°F
200.	Temperature	8/31/2018	004	83°F Maximum Daily	85°F
201.	Temperature	7/31/2019	004	83°F Maximum Daily	87°F
202.	Temperature	6/30/2020	004	83°F Maximum Daily	84°F
203.	Temperature	7/31/2020	004	83°F Maximum Daily	84°F
204.	Temperature	6/30/2021	004	83°F Maximum Daily	85°F

Narrative Effluent Limitation Violations of the Wastewater Permits

205. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants (including but not limited to effluent below the Wastewater Permits' minimum pH level of 6.5 standard units and above the maximum daily temperature limitation of 83º F), that have contributed to, and will continue to contribute to, the violation of state water quality standards and interference with the Merrimack River's assigned use.

206. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants (including but not limited to effluent below the Wastewater Permits' minimum pH level of 6.5 standard units and above the maximum daily temperature limitation of 83º F), that produce odor, color, taste or turbidity in the receiving water, and renders it unsuitable for its designated use, results in the dominance of nuisance species, and/or interferes with recreational activities.

207. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants (including but not limited to effluent below the Wastewater Permits' minimum pH level of 6.5 standard units and above the maximum daily temperature limitation of 83º F), that results in color, slicks, odors, or surface floating solids and contributes to the impairments of the

Merrimack River at waterbody segment NHRIV700060803-14-02 for aquatic life.

208. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants (including but not limited to effluent below the Wastewater Permits' minimum pH level of 6.5 standard units and above the maximum daily temperature limitation of 83º F), that result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans, or aquatic life.

Monitoring and Reporting Violations of the Wastewater Permits

209. On at least one occasion since January 2017, Nylon has failed to monitor for and report the maximum daily total residual chlorine, as detailed in the below table.

Par. No.	Pollutant Criteria	Monitoring Period End Date	Outfall	Type of Monitoring and Reporting Requirement
210.	Chlorine	8/31/2020	004	Benchmark

211. On at least one occasion since January 2017, Nylon has failed to notify EPA verbally and in writing of noncompliance which may endanger health or the environment, as detailed in the table below.

Par. No.	Dates of Violation	Type of Monitoring and Reporting Violation
212.	12/11/2019-1/10/2020	Failure to Notify

213. On at least five occasions since January 2017, Nylon has failed to submit discharge monitoring reports to EPA, as detailed in the table below.

Par. No.	Dates of Violation	Type of Monitoring and Reporting Violation
214.	10/1/2018-12/31/2018	Failure to Report DMR
215.	1/1/2019-3/31/2019	Failure to Report DMR
216.	4/1/2019-6/30/2019	Failure to Report DMR
217.	7/1/2019-9/30/2019	Failure to Report DMR
218.	10/1/2019-12/31/2019	Failure to Report DMR

219. On at least one occasion since January 2017, Nylon has improperly and/or incorrectly

filed discharge monitoring reports, as detailed in the table below.

Par. No.	Dates of Violation	Type of Monitoring and Reporting Violation
220.	12/11/2019-1/10/2020	Improper/Incorrect Reporting

221. On at least one occasion since January 2017, Nylon has untimely submitted discharge monitoring reports, as detailed in the table below.

Par. No.	Dates of Violation	Type of Monitoring and Reporting Violation
222.	12/11/2019-1/10/2020	Late Submittal of DMRs

Violations of the Stormwater Permits' Effluent Limitations

223. The Facility has failed, and continues to fail, to use control measures to minimize pollutant discharges.

224. The Facility has discharged, and continues to discharge, pollutants (including but not limited to zinc and other heavy metals) that have contributed to, and will continue to contribute to, degradation of the Merrimack River, including the violation of state water quality standards.

225. The discharge of zinc and other pollutants from the Facility has resulted in unnatural and objectionable odor, color, taste, and/or turbidity in the receiving waters downstream from the Facility.

226. The discharge of pollutants from the Facility has resulted in floating, suspended, and settleable solids; scum; benthic deposits; oil and grease; and/or harmful concentrations or combinations of chemical constituents in the receiving waters downstream from the Facility.

227. The discharge of pollutants from the Facility has contributed to the impairments of the Merrimack River at waterbody segment NHRIV700060803-14-02.

228. Upon information and belief, CLF expects that discovery will reveal additional discharges of pollutants causing or contributing to violations of the New Hampshire state water

quality standards.

229. Upon information and belief, CLF expects that discovery will reveal additional violations of the Stormwater Permits.

Pollutant: Zinc

230. The Facility's discharges of zinc contribute to the degradation of the Merrimack River and to the violation of state water quality standards.

231. When ingested, zinc may cause health problems in humans, including brain damage, infertility and developmental issues, pancreatic damage, anemia, nausea, vomiting, and stomach cramps.

232. Zinc is toxic to humans and aquatic organisms in high amounts, and it reacts with chemicals like cadmium to intensify their toxicity. Zinc bioaccumulates in aquatic animals.

233. The Facility's quarterly discharge monitoring reports show that they have discharged zinc every quarter for which monitoring was conducted since at least the first quarter of 2017.

234. The Facility has failed, and continues to fail, to use control measures to minimize discharges of zinc.

235. The Facility has discharged concentrations of zinc higher than the 2015 Stormwater Permit benchmark value for zinc of 0.04 milligrams per liter and/or the 2021 Stormwater Permit benchmark value for zinc of 37 micrograms per liter at least 30 times between the first quarter of 2017 and the last quarter of 2021, as detailed in the table below.[1]

Par. No.	Pollutant Criteria	Monitoring Period End Date	Outfall	Benchmark Value	Measured Value	Limit Exceedance Percent
236.	Zinc	3/31/2017	002	0.04 mg/L	0.05 mg/L	125%

[1] The benchmark value units of measurement for certain pollutant criteria change from milligrams per liter in the 2015 Stormwater Permit to micrograms per liter in the 2021 Stormwater Permit.

237.	Zinc	3/31/2017	003	0.04 mg/L	0.083 mg/L	208%
238.	Zinc	3/31/2017	004	0.04 mg/L	0.176 mg/L	440%
239.	Zinc	6/30/2018	002	0.04 mg/L	0.123 mg/L	308%
240.	Zinc	6/30/2018	003	0.04 mg/L	0.111 mg/L	278%
241.	Zinc	6/30/2018	004	0.04 mg/L	0.305 mg/L	763%
242.	Zinc	9/30/2018	002	0.04 mg/L	0.168 mg/L	420%
243.	Zinc	9/30/2018	003	0.04 mg/L	0.065 mg/L	163%
244.	Zinc	9/30/2018	004	0.04 mg/L	0.331 mg/L	828%
245.	Zinc	12/31/2018	002	0.04 mg/L	0.121 mg/L	303%
246.	Zinc	12/31/2018	003	0.04 mg/L	0.129 mg/L	323%
247.	Zinc	12/31/2018	004	0.04 mg/L	0.201 mg/L	503%
248.	Zinc	3/31/2019	002	0.04 mg/L	0.105 mg/L	263%
249.	Zinc	3/31/2019	003	0.04 mg/L	0.227 mg/L	568%
250.	Zinc	3/31/2019	004	0.04 mg/L	0.309 mg/L	773%
251.	Zinc	6/30/2019	002	0.04 mg/L	0.096 mg/L	240%
252.	Zinc	6/30/2019	003	0.04 mg/L	0.152 mg/L	380%
253.	Zinc	6/30/2019	004	0.04 mg/L	0.202 mg/L	505%
254.	Zinc	3/31/2020	002	0.04 mg/L	0.066 mg/L	165%
255.	Zinc	3/31/2020	004	0.04 mg/L	0.107 mg/L	268%
256.	Zinc	6/30/2020	002	0.04 mg/L	0.082 mg/L	205%
257.	Zinc	6/30/2020	003	0.04 mg/L	0.187 mg/L	468%
258.	Zinc	6/30/2020	004	0.04 mg/L	0.273 mg/L	683%
259.	Zinc	9/30/2020	002	0.04 mg/L	0.189 mg/L	473%
260.	Zinc	9/30/2020	003	0.04 mg/L	0.089 mg/L	223%
261.	Zinc	9/30/2020	004	0.04 mg/L	0.109 mg/L	273%
262.	Zinc	12/31/2020	002	0.04 mg/L	0.1 mg/L	250%
263.	Zinc	12/31/2020	004	0.04 mg/L	0.19 mg/L	475%
264.	Zinc	3/31/2021	002	0.04 mg/L	0.114 mg/L	285%
265.	Zinc	3/31/2021	003	0.04 mg/L	0.272 mg/L	680%

266. Nylon's four-quarter average zinc concentrations at the Facility have exceeded the 2015 Stormwater Permit's benchmark value of 0.04 and/or the 2021 Stormwater Permit's benchmark value of 37 micrograms per liter at least 27 times since the first quarter of 2017.

267. Nylon's discharges of zinc from the Facility have triggered the Stormwater Permits' corrective action and/or AIM requirements at least 27 times since the first quarter of 2017, as detailed in the table below.

Par. No.	**Pollutant Criteria**	**Date Corrective Action Triggered**	**Outfall**	**Benchmark Value**	**Annual Average**
268.	Zinc	9/30/2018	002	0.04 mg/L	0.129 mg/L

269.	Zinc	9/30/2018	003	0.04 mg/L	0.092 mg/L
270.	Zinc	9/30/2018	004	0.04 mg/L	0.394 mg/L
271.	Zinc	12/31/2018	002	0.04 mg/L	0.116 mg/L
272.	Zinc	12/31/2018	003	0.04 mg/L	0.097 mg/L
273.	Zinc	12/31/2018	004	0.04 mg/L	0.253 mg/L
274.	Zinc	3/31/2019	002	0.04 mg/L	0.129 mg/L
275.	Zinc	3/31/2019	003	0.04 mg/L	0.133 mg/L
276.	Zinc	3/31/2019	004	0.04 mg/L	0.287 mg/L
277.	Zinc	6/30/2019	002	0.04 mg/L	0.123 mg/L
278.	Zinc	6/30/2019	003	0.04 mg/L	0.143 mg/L
279.	Zinc	6/30/2019	004	0.04 mg/L	0.261 mg/L
280.	Zinc	3/31/2020	002	0.04 mg/L	0.097 mg/L
281.	Zinc	3/31/2020	003	0.04 mg/L	0.132 mg/L
282.	Zinc	3/31/2020	004	0.04 mg/L	0.205 mg/L
283.	Zinc	6/30/2020	002	0.04 mg/L	0.087 mg/L
284.	Zinc	6/30/2020	003	0.04 mg/L	0.147 mg/L
285.	Zinc	6/30/2020	004	0.04 mg/L	0.223 mg/L
286.	Zinc	9/30/2020	002	0.04 mg/L	0.108 mg/L
287.	Zinc	9/30/2020	003	0.04 mg/L	0.112 mg/L
288.	Zinc	9/30/2020	004	0.04 mg/L	0.173 mg/L
289.	Zinc	12/31/2020	002	0.04 mg/L	0.109 mg/L
290.	Zinc	12/31/2020	003	0.04 mg/L	0.083 mg/L
291.	Zinc	12/31/2020	004	0.04 mg/L	0.17 mg/L
292.	Zinc	3/31/2021	002	0.04 mg/L	0.121 mg/L
293.	Zinc	3/31/2021	003	0.04 mg/L	0.146 mg/L
294.	Zinc	3/31/2021	004	0.04 mg/L	0.146 mg/L

Pollutant: Effluent Containing Evidence of Stormwater Pollution

295. The Facility's discharges of effluent containing evidence of stormwater pollution contribute to the degradation of the Merrimack River and to the violation of state water quality standards for New Hampshire.

296. The Facility has failed, and continues to fail, to use control measures to minimize discharges of visible and malodorous pollutants.

297. Upon information and belief, facility inspections at the Facility revealed instances where discharges were not adequately controlled.

298. Nylon has observed evidence of stormwater pollution in the effluent of the Facility at

least eleven times since the first quarter of 2017. Nylon's observations of evidence of stormwater pollution at the Facility have triggered the Stormwater Permits' corrective action and/or AIM at least eleven times since the first quarter of 2017, as detailed in the table below.

Par. No.	Monitoring Period	Description of Issue
299.	2018/Q3	"solids in 2-2 from vegetated drainage swale, sediment conveyed thorugh [sic] the drainage system at 4-3."
300.	2018/Q4	"solids in 2-2 from vegetated drainage swale, solids at 3-1 and 4-3 appeared conveyed thorugh [sic] the drainage system."
301.	2019/Q1	"light red color in 2-1 from sprinkler flushing. Solids in 2-1 and 2-2 were from vegetated drainage swale. Some sediment at locked drain 4-3."
302.	2019/Q1 and Q2	"visual assessments were collected for first and second quarter [sic] and some solids such as sand were noticed in the visual samples."
303.	2020/Q1	"snow melt sample with settled sediment is [sic] most samples."
304.	2020/Q2	"settled sand in most the [sic] samples, some pollen on 3-1, 4-1. Pavement collection areas have more silt 4-1, 5-1."
305.	2020/Q3	"some settles [sic] sand in 2-1, 2-2, 4-1, 4-2 and pollen on most the [sic] samples floating."
306.	2020/Q4	"floating solids such as leaves and silt in many of the samples."
307.	2020/Q1-Q4	"visual assessments were collected for all four quarters and some solids such as sand sediment were noticed in the visual samples. In addition to heavy pollen seasons, sample will have floating or suspended pollen."
308.	2021/Q1	"snow melt sample, sediment 2-2, 3-1 dark dirty samples from snow banks."
309.	2021/Q2	"slight settled silt in 2-1, 2-2, 3-1, 4-1, 4-4. Heavier cloudy dirt in 4-4."

Monitoring and Reporting Violations of the Stormwater Permits

310. Nylon has failed to conduct required quarterly benchmark and annual impaired waters monitoring at the Facility for the following pollutant criteria, on the following dates, and from the following outfalls:

Par. No.	Pollutant Criteria	Monitoring Period End Date	Outfall	Type of Monitoring and Reporting Requirement
311.	Zinc	3/31/2017	001	Benchmark
312.	Zinc	6/30/2017	001	Benchmark
313.	Zinc	6/30/2017	002	Benchmark
314.	Zinc	6/30/2017	003	Benchmark
315.	Zinc	6/30/2017	004	Benchmark
316.	Zinc	9/30/2017	001	Benchmark

317.	Zinc	9/30/2017	002	Benchmark
318.	Zinc	9/30/2017	003	Benchmark
319.	Zinc	9/30/2017	004	Benchmark
320.	Aluminum	9/30/2017	001	Impaired waters
321.	Aluminum	9/30/2017	002	Impaired waters
322.	Aluminum	9/30/2017	003	Impaired waters
323.	Aluminum	9/30/2017	004	Impaired waters
324.	Dissolved Oxygen	9/30/2017	001	Impaired waters
325.	Dissolved Oxygen	9/30/2017	002	Impaired waters
326.	Dissolved Oxygen	9/30/2017	003	Impaired waters
327.	Dissolved Oxygen	9/30/2017	004	Impaired waters
328.	E. coli	9/30/2017	001	Impaired waters
329.	E. coli	9/30/2017	002	Impaired waters
330.	E. coli	9/30/2017	003	Impaired waters
331.	E. coli	9/30/2017	004	Impaired waters
332.	pH	9/30/2017	001	Impaired waters
333.	pH	9/30/2017	002	Impaired waters
334.	pH	9/30/2017	003	Impaired waters
335.	pH	9/30/2017	004	Impaired waters
336.	Zinc	12/31/2017	001	Benchmark
337.	Zinc	12/31/2017	002	Benchmark
338.	Zinc	12/31/2017	003	Benchmark
339.	Zinc	12/31/2017	004	Benchmark
340.	Zinc	3/31/2018	001	Benchmark
341.	Zinc	3/31/2018	002	Benchmark
342.	Zinc	3/31/2018	003	Benchmark
343.	Zinc	3/31/2018	004	Benchmark
344.	Zinc	6/30/2018	001	Benchmark
345.	Zinc	9/30/2018	001	Benchmark
346.	Aluminum	9/30/2018	001	Impaired waters
347.	Dissolved Oxygen	9/30/2018	001	Impaired waters
348.	E. coli	9/30/2018	001	Impaired waters
349.	E. coli	9/30/2018	002	Impaired waters
350.	E. coli	9/30/2018	003	Impaired waters
351.	E. coli	9/30/2018	004	Impaired waters
352.	pH	9/30/2018	001	Impaired waters
353.	Zinc	12/31/2018	001	Benchmark
354.	Zinc	3/31/2019	001	Benchmark
355.	Zinc	6/30/2019	001	Benchmark
356.	Zinc	9/30/2019	001	Benchmark
357.	Zinc	9/30/2019	002	Benchmark
358.	Zinc	9/30/2019	003	Benchmark
359.	Zinc	9/30/2019	004	Benchmark
360.	Aluminum	9/30/2019	001	Impaired waters
361.	Aluminum	9/30/2019	002	Impaired waters

362.	Aluminum	9/30/2019	003	Impaired waters
363.	Aluminum	9/30/2019	004	Impaired waters
364.	Dissolved Oxygen	9/30/2019	001	Impaired waters
365.	Dissolved Oxygen	9/30/2019	002	Impaired waters
366.	Dissolved Oxygen	9/30/2019	003	Impaired waters
367.	Dissolved Oxygen	9/30/2019	004	Impaired waters
368.	E. coli	9/30/2019	001	Impaired waters
369.	E. coli	9/30/2019	002	Impaired waters
370.	E. coli	9/30/2019	003	Impaired waters
371.	E. coli	9/30/2019	004	Impaired waters
372.	pH	9/30/2019	001	Impaired waters
373.	pH	9/30/2019	002	Impaired waters
374.	pH	9/30/2019	003	Impaired waters
375.	pH	9/30/2019	004	Impaired waters
376.	Zinc	12/31/2019	001	Benchmark
377.	Zinc	12/31/2019	002	Benchmark
378.	Zinc	12/31/2019	003	Benchmark
379.	Zinc	12/31/2019	004	Benchmark
380.	Zinc	3/31/2020	001	Benchmark
381.	Zinc	6/30/2020	001	Benchmark
382.	Zinc	9/30/2020	001	Benchmark
383.	Aluminum	9/30/2020	001	Impaired waters
384.	Aluminum	9/30/2020	002	Impaired waters
385.	Aluminum	9/30/2020	003	Impaired waters
386.	Aluminum	9/30/2020	004	Impaired waters
387.	Dissolved Oxygen	9/30/2020	001	Impaired waters
388.	Dissolved Oxygen	9/30/2020	002	Impaired waters
389.	Dissolved Oxygen	9/30/2020	003	Impaired waters
390.	Dissolved Oxygen	9/30/2020	004	Impaired waters
391.	E. coli	9/30/2020	001	Impaired waters
392.	E. coli	9/30/2020	002	Impaired waters
393.	E. coli	9/30/2020	003	Impaired waters
394.	E. coli	9/30/2020	004	Impaired waters
395.	pH	9/30/2020	001	Impaired waters
396.	pH	9/30/2020	002	Impaired waters
397.	pH	9/30/2020	003	Impaired waters
398.	pH	9/30/2020	004	Impaired waters
399.	Zinc	12/31/2020	001	Benchmark
400.	Zinc	3/31/2021	001	Benchmark
401.	Zinc	9/30/2021	002	Benchmark
402.	Zinc	9/30/2021	003	Benchmark
403.	Zinc	9/30/2021	004	Benchmark
404.	Zinc	12/31/2021	002	Benchmark
405.	Zinc	12/31/2021	003	Benchmark
406.	Zinc	12/31/2021	004	Benchmark

407.	Aluminum	12/31/2021	002	Impaired waters
408.	Aluminum	12/31/2021	003	Impaired waters
409.	Aluminum	12/31/2021	004	Impaired waters
410.	Dissolved Oxygen	12/31/2021	002	Impaired waters
411.	Dissolved Oxygen	12/31/2021	003	Impaired waters
412.	Dissolved Oxygen	12/31/2021	004	Impaired waters
413.	E. coli	12/31/2021	002	Impaired waters
414.	E. coli	12/31/2021	003	Impaired waters
415.	E. coli	12/31/2021	004	Impaired waters
416.	pH	12/31/2021	002	Impaired waters
417.	pH	12/31/2021	003	Impaired waters
418.	pH	12/31/2021	004	Impaired waters

419. Where Nylon failed to conduct required quarterly benchmark monitoring due to adverse weather conditions, Nylon failed to take a substitute sample during the next qualifying storm event as required by the Stormwater Permits.

420. On at least five occasions since January 2017, Nylon has failed to submit discharge monitoring reports to EPA, as detailed in the table below.

Par. No.	**Dates of Violation**	**Type of Monitoring and Reporting Violation**
421.	10/1/2018-12/31/2018	Failure to Report DMR
422.	1/1/2019-3/31/2019	Failure to Report DMR
423.	4/1/2019-6/30/2019	Failure to Report DMR
424.	7/1/2019-9/30/2019	Failure to Report DMR
425.	10/1/2019-12/31/2019	Failure to Report DMR

426. On at least one occasion since January 2017, Nylon has improperly and/or incorrectly filed discharge monitoring reports, as detailed in the table below.

Par. No.	**Dates of Violation**	**Type of Monitoring and Reporting Violation**
427.	12/11/2019-1/10/2020	Improper/Incorrect Reporting

428. On at least one occasion since January 2017, Nylon has untimely submitted discharge monitoring reports, as detailed in the table below.

Par. No.	**Dates of Violation**	**Type of Monitoring and Reporting Violation**

429.	12/11/2019-1/10/2020	Late Submittal of DMRs

THE FACILITY'S HARMS TO CLF MEMBERS

430. CLF members use the Merrimack River for drinking water, swimming, boating, fishing, aesthetic enjoyment, and observing wildlife.

431. CLF members cherish the Merrimack River as a place of natural importance, historical interest, and/or personal significance.

432. CLF members enjoy the experience of sharing the recreational and aesthetic values of the Merrimack River with family and friends.

433. The Facility's discharges of pollutants into the Merrimack River have degraded the health of the waterbody and contributed to its impairments in a way that diminishes the use and enjoyment of the waterbody by CLF members.

434. CLF members are concerned about the health impacts of pollution from drinking water sourced downstream from the Facility.

435. CLF members are concerned about the health impacts of pollution from direct contact with waters downstream from the Facility.

436. CLF members worry about the potential health effects of being exposed to heavy metals and other pollutants in the Merrimack River while boating and fishing.

437. CLF members worry about the negative impact of heavy metals and other pollutants on their ability to enjoy observing wildlife on the Merrimack River.

438. The presence of odor, unnatural color, scum, foam, and diminished water clarity adversely affect the aesthetic enjoyment of the Merrimack River by CLF members.

CLAIMS FOR RELIEF

Count I: Violation of the Wastewater Permits' Effluent Limitation and State Certification Requirement for pH

439. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

440. The Facility has discharged effluent in violation of the Wastewater Permits' pH level requirement at least 32 times since the first quarter of 2017.

441. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate these provisions of the Wastewater Permits in the future unless and until enjoined from doing so.

442. Each day that Defendants have violated, or continue to violate, the Wastewater Permits' minimum pH requirement is a separate and distinct violation of the Wastewater Permits, State Certification Requirement, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Count II: Violation of the Wastewater Permits' Effluent Limitation for Temperature

443. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

444. The Facility has discharged effluent in violation of the Wastewater Permits' maximum daily temperature at least 6 times since the first quarter of 2017.

445. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Wastewater Permits in the future unless and until enjoined from doing so.

446. Each day that Defendants have violated, or continue to violate, the Wastewater Permits' daily temperature limitation is a separate and distinct violation of the Wastewater Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Count III: Failure to Comply with the Wastewater Permits' Prohibition Against Causing a Violation of Water Quality Standards, and/or Interference with the Merrimack River's Assigned Use

447. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

448. Upon information and belief, the Facility has discharged, and continues to discharge,

pollutants that have caused, and will continue to cause, the violation of state water quality standards, and interference with the Merrimack River's assigned use, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

449. The Facility has caused, and continues to cause, violations of New Hampshire state water quality standards contained in N.H. Code Admin. R. Env-Wq § 1703.18, pertaining to pH limits, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

450. The Facility has caused, and continues to cause, violations of New Hampshire state water quality standards contained in N.H. Code Admin. R. Env-Wq § 1703.01(b), (c), pertaining to the integrity of surface waters; fish, shellfish, and wildlife; and recreation, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

451. The Facility has caused, and continues to cause, violations of New Hampshire state water quality standards contained in N.H. Code Admin. R. Env-Wq § 1703.19, pertaining to biological and aquatic community integrity, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

452. The Facility has caused, and continues to cause, violations of New Hampshire state water quality standards contained in N.H. Code Admin. R. Env-Wq § 1703.03(c)(1), pertaining to substances that settle; float; produce odor, taste, or turbidity; or interfere with recreation, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

453. The Facility has caused, and continues to cause, violations of New Hampshire state water quality standards contained in N.H. Code Admin. R. Env-Wq §1703.10(b), pertaining to color in Class B waters, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

454. The Facility has caused, and continues to cause, violations of New Hampshire state water quality standards contained in N.H. Code Admin. R. Env-Wq § 1703.12(b), pertaining to slicks, odors, or floating solids, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

455. The Facility has caused, and continues to cause, violations of New Hampshire state water quality standards contained in N.H. Code Admin. R. Env-Wq §1703.21(a), pertaining to toxic substances or chemical constituents, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

456. Every state surface water quality standard violation constitutes a separate and distinct violation of the Wastewater Permits and the Clean Water Act.

457. The Facility has interfered with the Merrimack River's assigned use for aquatic life.

458. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate these provisions of the Wastewater Permits in the future unless and until enjoined from doing so.

459. Each day, and for each pollutant parameter, each state water quality standard that Defendants have violated, or continue to violate, and each assigned use Defendants have interfered with constitutes a separate and distinct violation of the Wastewater Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Count IV: Violation of the Wastewater Permits' Narrative Effluent Limitations

460. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

461. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants that produce odor, color, taste or turbidity in the receiving water, and renders it unsuitable for its designated use, results in the dominance of nuisance species, and/or interferes

with recreational activities, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

462. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants that result in color, slicks, odors, or surface floating solids and contributes to the impairments of the Merrimack River at waterbody segment NHRIV700060803-14-02 for aquatic life, in violation of the 2008 Wastewater Permit. 2008 Wastewater Permit at 8.

463. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants that result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans, or aquatic life, in violation of the Wastewater Permits. 2008 Wastewater Permit at 4; 2019 Wastewater Permit at 8.

464. Upon information and belief, the Facility has discharged, and continues to discharge, pollutants that persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life, in violation of the 2019 Wastewater Permit. 2019 Wastewater Permit at 8.

465. In light of Defendants' history of violations, and its failure to take corrective action, Defendants will continue to violate these provisions of the Wastewater Permits in the future unless and until enjoined from doing so.

466. Each day, and for each pollutant parameter, that Defendants have violated, or continue to violate, the Wastewater Permits' narrative limitations is a separate and distinct violation of the Wastewater Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Count V: Failure to Comply with the Wastewater Permits Monitoring and Reporting Requirements

467. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

468. On at least one occasion since January 2017, Nylon has failed to monitor for and report the maximum daily total residual chlorine, in violation of the 2019 Wastewater Permit. 2019 Wastewater Permit at 2.

469. On at least one occasion since January 2017, Nylon has failed to notify EPA verbally and in writing of noncompliance which may endanger health or the environment, in violation of the 2019 Wastewater Permit. 2019 Wastewater Permit at 9-10.

470. On at least five occasions since January 2017, Nylon has failed to submit quarterly discharge monitoring reports to EPA, in violation of the Wastewater Permits. 2008 Wastewater Permit at 6; 2019 Wastewater Permit Fact Sheet at 10.

471. On at least one occasion since January 2017, Nylon has improperly and/or incorrectly filed quarterly discharge monitoring reports, in violation of the Wastewater Permits. 2008 Wastewater Permit at 6; 2019 Wastewater Permit Fact Sheet at 10.

472. On at least one occasion since January 2017, Nylon has untimely submitted quarterly discharge monitoring reports, in violation of the Wastewater Permits. 2008 Wastewater Permit at 6; 2019 Wastewater Permit Fact Sheet at 10.

473. In light of Defendants' history of violations, Defendants will continue to violate these provisions of the Wastewater Permits in the future unless and until enjoined from doing so.

474. Each day that Defendants have violated, or continue to violate, the Wastewater Permits' monitoring and reporting requirements is a separate and distinct violation of the Wastewater Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Count VI: Failure to Comply with the Stormwater Permits' Requirement to Take Corrective Actions and/or AIMs Following Triggering Events

475. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

476. On at least 27 occasions at the Facility, the average of four quarterly samplings results exceeded the applicable benchmark values or an exceedance of the four-quarter average was mathematically certain, triggering corrective action or additional implementation measures.

477. Upon information and belief, the control measures at the Facility did not and do not adequately minimize discharges to meet applicable water quality standards, triggering corrective action or additional implementation measures.

478. On at least eleven occasions, evidence of stormwater pollution is documented in the Facility's quarterly visual assessments of discharge, triggering corrective action or additional implementation measures.

479. Facility inspections revealed that discharges were not adequately controlled at the Facility, triggering corrective action or additional implementation measures.

480. Following these triggering events, Nylon did not take corrective action nor AIMs, in violation of the 2015 Stormwater Permit § 4.1, § 4.3.1, § 4.3.2 and the 2021 Stormwater Permit § 5.1.1, § 5.1.3.1, and § 5.1.3.2.

481. Upon information and belief, following these triggering events, Nylon did not review and revise the Stormwater Pollution Prevention Plans for the Facility, in violation of the 2015 Stormwater Permit § 4.1, § 4.3.1, § 4.3.2 and the 2021 Stormwater Permit § 5.1.1, § 5.1.3.1, and § 5.1.3.2.

482. Upon information and belief, following these triggering events, Nylon did not immediately take all reasonable steps to minimize or prevent the discharge of pollutants until it could implement a permanent solution, in violation of the 2015 Stormwater Permit § 4.1, § 4.3.1, § 4.3.2 and the 2021 Stormwater Permit § 5.1.1, § 5.1.3.1, and § 5.1.3.2.

483. Upon information and belief, following these triggering events, Nylon did not take

subsequent actions as necessary before the next storm event if possible and within fourteen calendar days from the time of discovery, in violation of the 2015 Stormwater Permit § 4.1, § 4.3.1, § 4.3.2 and the 2021 Stormwater Permit § 5.1.1, § 5.1.3.1, and § 5.1.3.2.

484. In light of Defendants' history of violations, and its failure to take corrective action, Defendants will continue to violate this provision of the Stormwater Permits in the future unless and until enjoined from doing so.

485. Each day that Defendants have violated, or continue to violate, the corrective action and/or AIM requirement is a separate and distinct violation of the Stormwater Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Count VII: Failure to Comply with the Stormwater Permits' Requirement to Use Control Measures to Minimize Pollutant Discharges

486. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

487. The Stormwater Permits require that Nylon select, design, install, and implement control measures "to minimize pollutant discharges." 2015 Stormwater Permit § 2.1 at 14; 2021 Stormwater Permit § 2.1 at 18.

488. Nylon has failed, and continues to fail, to select, design, install, and implement control measures to minimize pollutant discharges.

489. Upon information and belief, Nylon has failed to comply with the pollutant control measures required in Section 2.1 of the Stormwater Permits, including but not limited to provisions related to minimizing exposure, good housekeeping measures, maintenance of control measures, leaks and spills, control of sediment discharge, and dust generation.

490. On at least 30 occasions at the Facility, Nylon has discharged pollutants in excess of the benchmark value in the Stormwater Permits.

491. Each day that Defendants have violated, or continue to violate, the Stormwater Permits'

requirement to use control measures to minimize pollutant discharges is a separate and distinct violation of the Stormwater Permits, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and 40 C.F.R. Part 451.

Count VIII: Failure to Comply with the Stormwater Permits' Prohibition Against Contributing to Violation of Water Quality Standards

492. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

493. Nylon has not controlled, and is not controlling, its stormwater discharges as necessary to meet N.H. Code Admin. R. Env-Wq § 1703.01(b), (c), pertaining to the integrity of surface waters; fish, shellfish, and wildlife; and recreation, in violation of the 2015 Stormwater Permit § 2.1, § 2.2.1 and the 2021 Stormwater Permit § 2.2.1.

494. Nylon has not controlled, and is not controlling, its stormwater discharges as necessary to meet N.H. Code Admin. R. Env-Wq § 1703.19, pertaining to biological and aquatic community integrity, in violation of the 2015 Stormwater Permit § 2.1, § 2.2.1 and the 2021 Stormwater Permit § 2.2.1.

495. Nylon has not controlled, and is not controlling, its stormwater discharges as necessary to meet N.H. Code Admin. R. Env-Wq § 1703.03(c)(1), pertaining to substances that settle; float; produce odor, taste, or turbidity; or interfere with recreation, in violation of the 2015 Stormwater Permit § 2.1, § 2.2.1 and the 2021 Stormwater Permit § 2.2.1.

496. Nylon has not controlled, and is not controlling, its stormwater discharges as necessary to meet N.H. Code Admin. R. Env-Wq §1703.09(b), pertaining to oil or grease in Class B waters, in violation of the 2015 Stormwater Permit § 2.1, § 2.2.1 and the 2021 Stormwater Permit § 2.2.1.

497. Nylon has not controlled, and is not controlling, its stormwater discharges as necessary to meet N.H. Code Admin. R. Env-Wq §1703.10(b), pertaining to color in Class B waters, in

violation of the 2015 Stormwater Permit § 2.1, § 2.2.1 and the 2021 Stormwater Permit § 2.2.1.

498. Nylon has not controlled, and is not controlling, its stormwater discharges as necessary to meet N.H. Code Admin. R. Env-Wq § 1703.12(b), pertaining to slicks, odors, or floating solids, in violation of the 2015 Stormwater Permit § 2.1, § 2.2.1 and the 2021 Stormwater Permit § 2.2.1.

499. Nylon has not controlled, and is not controlling, its stormwater discharge as necessary to meet N.H. Code Admin. R. Env-Wq §1703.21(a), pertaining to toxic substances or chemical constituents, in violation of the 2015 Stormwater Permit § 2.1, § 2.2.1 and the 2021 Stormwater Permit § 2.2.1.

500. Every state surface water quality standard violation constitutes a separate and distinct violation of the Stormwater Permits and the Clean Water Act.

501. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate the Stormwater Permits' prohibition against causing or contributing to the state water quality standards violations, including violations of each of the above-enumerated state water quality standards, unless and until enjoined from doing so.

502. Each day, and for each pollutant parameter and each state water quality standard that Defendants have violated, or continue to violate, constitutes a separate and distinct violation of the Stormwater Permits and of Section 301(a) of the Clean Water Act, 33 U.S.C. §§ 1311(a).

Count IX: Failure to Comply with the Stormwater Permits' Monitoring and Reporting Requirements

503. Paragraphs 1 through 438 are incorporated by reference as if fully set forth herein.

504. Nylon did not conduct required quarterly benchmark monitoring at the Facility at least 41 times since the first quarter of 2017, in violation of the 2015 Stormwater Permit § 6.2, § 8.C.3 and the 2021 Stormwater Permit §4.2, § 8.C.4.

505. Nylon did not conduct required annual impaired waters monitoring at the Facility at least 67 times since the first quarter of 2017, in violation of the 2015 Stormwater Permit § 6.2.4.1 and the 2021 Stormwater Permit § 4.2.5, § 4.2.5.1.

506. On at least five occasions since January 2017, Nylon did not submit discharge monitoring reports to EPA, in violation of the 2015 Stormwater Permit § 6.1.9 and the 2021 Stormwater Permit § 4.1.9.

507. On at least one occasion since January 2017, Nylon improperly and/or incorrectly filed discharge monitoring reports, in violation of the 2015 Stormwater Permit § 6.1.9 and the 2021 Stormwater Permit § 4.1.9.

508. On at least one occasion since January 2017, Nylon did not submit discharge monitoring reports by the deadline, in violation of the 2015 Stormwater Permit § 6.1.9 and the 2021 Stormwater Permit § 4.1.9.

509. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Stormwater Permit in the future unless and until enjoined from doing so.

510. Each day that Defendants have violated, or continue to violate, the monitoring and reporting requirements of the Stormwater Permits is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

RELIEF REQUESTED

Plaintiff respectfully requests that this Court grant the following relief:

a. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Defendants have violated, and remain in violation, of the Wastewater Permits, the Stormwater Permits, the State Certification Requirement for pH, Section 301(a) of the Clean Water Act, 33 U.S.C

§ 1311(a), and applicable regulations, including but not limited to state water quality standards, as alleged in Counts I, II, II, IV, V, VI, VII, VIII, and IX of this Complaint;

b. Enjoin Defendants from violating the requirements of the Wastewater Permits, the Stormwater Permits, the State Certification Requirement for pH, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), applicable Clean Water Act regulations, and state water quality standards;

c. Impose civil penalties on Defendants of up to $56,460 per day per violation for all violations occurring after November 2, 2015, and where penalties are assessed on or after December 23, 2020, pursuant to Sections 505(a) and 309(d) of the Clean Water Act, 33 U.S.C. §§ 1365(a) and 1319(d), and its implementing regulations of 40 C.F.R. § 19.4;

d. Award Plaintiff's costs of litigation, including reasonable attorney and expert witness fees, as provided under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(d); and

e. Grant such other relief as this Court may deem appropriate.

Dated: April 4, 2022

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